

In the Matter of Merchant Mariner's Document No. Z-699042
Issued to: EMILE CAMMILE SILVIO

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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EMILE CAMMILE SILVIO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 12 October, 1953, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-699042 issued to Emile Cammile Silvio upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as an ordinary seaman on board the American SS YAQUE under authority of the document above described, on or about 29 September, 1953, while said vessel was anchored in the port of Guayaquil, Ecuador, he unlawfully had a quantity of marijuana in his possession.

At the hearing, Appellant was given a full explanation of the nature of proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Chief Mate of the YAQUE and two U. S. Customs employees at New Orleans.

In defense, Appellant testified under oath in his own behalf. He denied that he had any knowledge of the presence of the marijuana and he stated that he had never smoked marijuana.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-699042 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that:
POINT I. Appellant was not advised of his right to counsel nor the serious nature of the charge against him.

POINT II. It was necessary to prove beyond every reasonable doubt that the seven cigarettes were found in Appellant's trousers and also that he know they were there. But the burden was placed upon Appellant as stated in the Examiner's opinion:

"In view of the preceding, the presumption of innocence in favor of appellant was overcome by proof of possession which became conclusive of the allegation as I considered there was an absence of any explanation which I considered to be satisfactory as to the presence of the Chesterfield package with the seven marihuana cigarettes therein."

POINT III. The evidence was illegally obtained since the Chief Mate had no search warrant.

POINT IV. Evidence of marijuana use and traffic on board the YAQUE indicates that other crew members could have had the motive and had ample opportunity to "frame" the Appellant.

POINT V. Appellant can produce evidence to prove that a crew member had both motive and opportunity to "plant" marijuana in Appellant's trousers.

APPEARANCES: John P. Dowling, Esq., of New Orleans, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On foreign voyage including the dates from 29 September to 8 October, 1953, Appellant was serving as an ordinary seaman on board the American SS YAQUE and acting under authority of his Merchant Mariner's Document No. Z-699042.

On 29 September, 1953, while the ship was at Guayaquil, Ecuador, the Chief Mate suspected that Appellant had marijuana in his possession. While Appellant was ashore, the Chief Mate searched Appellant's quarter and found a Chesterfield cigarette package containing seven marijuana cigarettes in a pocket of Appellant's khaki work trousers which were hanging on the outside of his locker. The Chief Mate turned the cigarettes over to the Master and Appellant was not told about this until a later date.

When the ship arrived at New Orleans on 7 October, 1953, the Chief Mate searched Appellant and his belongings without finding any evidence of marijuana or other contraband. After this, the Chief Mate told Appellant about the marijuana cigarettes which been found in his trousers on 29 September. Appellant said he did not know anything about the presence of the cigarettes in his trousers.

Subsequent analysis by the U. S. Customs chemist at New Orleans verified that the seven cigarettes were made out of marijuana.

Appellant has been going to sea since 1945. His prior record consists of a probationary

suspension in 1947 for refusing to obey a command of the Master.

OPINION

POINT I.

Appellant was advised by the Investigating Officer, at the time of service of the charge and specification, that Appellant had the right to be represented by counsel. Appellant was also advised of the right by the Examiner at the beginning of the hearing. The seriousness of the offense of possession of narcotics should be well known to all seamen in view of the constant policy of the Coast Guard to revoke the documents of all seamen found guilty of narcotics offenses.

POINT III.

The evidence was not illegally obtained since the Master of a ship or his officers are entitled to make any reasonable search for contraband on the ship.

POINTS IV and V.

The record does not disclose evidence which indicates that any other member of the crew "framed" Appellant or had any reason to "plant" marijuana in Appellant's trousers. Appellant did not produce such evidence at the hearing and he has made no showing on appeal that newly discovered evidence of this nature has been brought to his attention since the time of the hearing.

POINT II.

The testimony of the Chief Mate was sufficient evidence upon which to base the conclusion that Appellant had knowledge of the presence of the seven marijuana cigarettes in his trousers; and therefore, that he had such possession as constituted prima facie proof of guilt which placed the burden on Appellant to explain the possession to the satisfaction of the Examiner. Yee Hem v. U.S. (1925), 268 U.S. 178. Although the defense of lack of knowledge of the presence of the marijuana is a good defense when it is accepted by the trier of the facts, the Examiner rejected the denial of knowledge when he stated that he accepted the testimony of the Chief Mate as the truth and that the possession had not been explained to his satisfaction. The weight to be attached to a denial of knowledge is for the jury to determine. Gee Woe v. U.S. (C.C.A. 5, 1918), 250 Fed. 428, cert. den. 248 U.S. 562. The rule is the same where the Examiner, as the trier of the facts, hears and observes the witnesses. It is also noted that the degree of proof required in these administrative, remedial proceedings is substantial evidence rather than proof beyond a reasonable doubt.

CONCLUSION

Since it is considered that the points raised on appeal are without merit, the order of the Examiner will be sustained.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 12 October, 1954, is ~~REVERSED~~ **AFFIRMED**.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 13th day of May, 1954.